

REMARKS

The Election/Restriction requirement indicates that restriction to one of Groups I and II is required under 35 U.S.C. §121. The requirement for restriction is based on the Examiner's assertion that the inventions of Groups I and II are distinct in view of M.P.E.P. § 806.05(e), which is reproduced in part below:

Process and apparatus for its practice can be shown to be distinct inventions, if either or both of the following can be shown: (A) that the process *as claimed* can be practiced by another materially different apparatus or by hand; or (B) that the apparatus *as claimed* can be used to practice another and materially different process. (emphasis in original).

The argument set forth in the Election/Restriction requirement indicates that "...Invention I, can, at least in part, be carried out by hand." (emphasis added).

The Applicants respectfully submit that M.P.E.P. § 806.05(e) requires that the "process as claimed" be capable of being carried out by hand, and not merely some portion of the claimed process. More particularly, the language in the M.P.E.P highlights the fact that a process may be distinct from an apparatus if the process as claimed can be practiced by hand. The Election/Restriction requirement does not provide a rationale for restriction based on the "process as claimed" as required by M.P.E.P. § 806.05(e), but rather on a portion of the claim (*e.g.*, "...Invention I, can, at least in part, be carried out by hand."). The Applicants therefore respectfully submit that the proper basis for requiring restriction of Groups I and II has not been established under M.P.E.P. § 806.05(e), and reconsideration and withdrawal of the requirement for restriction is respectfully requested.

In the aforementioned arguments, the Applicants are contesting the propriety of the requirement for restriction. Because Applicant believes that the proper showing required by M.P.E.P. § 806.05(e) has not been established, the Applicants do not reach the issue of whether such identified groups are patentably distinct from one another.



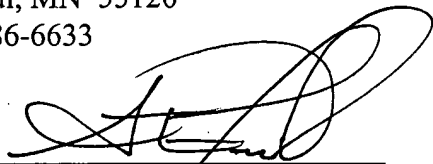
CONCLUSION

In view of the above, the Applicants respectfully request reconsideration and withdrawal of the requirement for restriction. If the Examiner believes it necessary or helpful, the undersigned attorney of record may be contacted at 651-686-6633, x110 to discuss any issues related to this case.

Respectfully submitted,

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Date: August 5, 2004

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